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Attorney for Defendant
Stephens and Michaels Associates, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TIM TOTH)	Case No.: 2:13-CV-00372-GMN-VCF
)	
Plaintiff,)	
)	
vs.)	
)	
STEPHENS AND MICHAELS))	
ASSOCIATES, INC.; and MEAGAN))	
JAFFARIAN, inclusive,)	
)	
Defendants)	

DEFENDANT SMA'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant, STEPHENS AND MICHAELS ASSOCIATES, INC. ("Defendant SMA"), by and through its counsel of record, Peter Dubowsky, Esq. of the DUBOWSKY LAW OFFICE, CHTD., hereby Answers the First Amended Complaint of Plaintiff, TIM TOTH, admitting, denying, and alleging as follows:

JURIDICTION

1. Defendant SMA DENIES each and every allegation contained in Paragraph 1 of the First Amended Complaint.

2. Defendant SMA is without information and belief as to the allegations contained in Paragraph 4 of the First Amended Complaint and therefore denies the same.

PARTIES

3. Defendant SMA is without information and belief as to the allegations contained in Paragraph 5 of the First Amended Complaint and therefore denies the same.

4. Defendant SMA admits the allegation contained in Paragraph 6 of the First Amended Complaint.

5. Defendant SMA admits the allegation contained in Paragraph 7 of the First Amended Complaint.

6. Defendant SMA DENIES each and every allegation contained in Paragraph 8 of the First Amended Complaint.

ALLEGATIONS APPLICABLE TO ALL COUNTS

The Debt

7. Defendant SMA admits the allegation contained in Paragraph 9 of the First Amended Complaint.

8. Defendant SMA DENIES each and every allegation contained in Paragraph 10 of the First Amended Complaint.

9. Defendant SMA DENIES each and every allegation contained in Paragraph 11 of the First Amended Complaint.

10. Defendant SMA DENIES each and every allegation contained in Paragraph 12 of the First Amended Complaint.

STEPHENS AND MICHAELS Engages in Harassment and Abusive Tactics
FACTS

11. Defendant SMA DENIES each and every allegation contained in Paragraph 13 of the First Amended Complaint.

12. Defendant SMA DENIES each and every allegation contained in Paragraph 14 of the First Amended Complaint.

13. Defendant SMA DENIES each and every allegation contained in Paragraph 15 of the First Amended Complaint.

14. Defendant SMA DENIES each and every allegation contained in Paragraph 16 of the First Amended Complaint.

15. Defendant SMA DENIES each and every allegation contained in Paragraph 17 of the First Amended Complaint.

16. Defendant SMA DENIES each and every allegation contained in Paragraph 18 of the First Amended Complaint.

17. Defendant SMA DENIES each and every allegation contained in Paragraph 19 of the First Amended Complaint.

18. Defendant SMA DENIES each and every allegation contained in Paragraph 20 of the First Amended Complaint.

PLAINTIFF SUFFERED ACTUAL DAMAGES

19. Defendant SMA DENIES each and every allegation contained in Paragraph 21 of the First Amended Complaint.

20. Defendant SMA DENIES each and every allegation contained in Paragraph 22 of the First Amended Complaint.

21. Defendant SMA DENIES each and every allegation contained in Paragraph 23 of the First Amended Complaint.

RESPONDEAT SUPERIOR LIABILITY

22. Defendant SMA DENIES each and every allegation contained in Paragraph 24 of the First Amended Complaint.

23. Defendant SMA DENIES each and every allegation contained in Paragraph 25 of the First Amended Complaint.

24. Defendant SMA DENIES each and every allegation contained in Paragraph 26 of the First Amended Complaint.

25. Defendant SMA DENIES each and every allegation contained in Paragraph 27 of the First Amended Complaint.

COUNT I
Violations of the FDCPA – 15 U.S.C. § 1692, et seq.

26. As to Paragraph 40 of the First Amended Complaint, Defendant SMA incorporates by reference all the above paragraphs of this Answer as though fully stated herein.

27. Defendant SMA DENIES each and every allegation contained in Paragraph 41 of the First Amended Complaint.

28. Defendant SMA DENIES each and every allegation contained in Paragraph 42 of the First Amended Complaint.

29. Defendant SMA DENIES each and every allegation contained in Paragraph 43 of the First Amended Complaint.

30. Defendant SMA DENIES each and every allegation contained in Paragraph 44 of the First Amended Complaint.

31. Defendant SMA DENIES each and every allegation contained in Paragraph 45 of the First Amended Complaint.

32. Defendant SMA DENIES each and every allegation contained in Paragraph 46 of the First Amended Complaint.

33. Defendant SMA DENIES each and every allegation contained in Paragraph 47 of the First Amended Complaint.

COUNT I.

WHEREFORE, Defendant SMA, STEPHENS AND MICHAELS ASSOCIATES, INC., prays that Plaintiff go and take nothing by way of their First Amended Complaint, Claims for Relief, and Prayer for Relief, alleged therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Plaintiff's First Amended Complaint fails to state any cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

To the extent any FDCPA violation would even exist, the Defendant SMA would not be liable because the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

THIRD AFFIRMATIVE DEFENSE

Defendant SMA has not violated the laws or regulations of the United States with regard to any Plaintiff or any other individual or member of this action.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's First Amended Complaint, and each alleged cause of action set forth therein, may be barred by the doctrines of accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, and waiver by reason of Plaintiff's conduct, actions and omissions.

FIFTH AFFIRMATIVE DEFENSE

Neither Defendant SMA nor its servants or agents failed to satisfy any duty owed with regard to Plaintiff.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff brought this action in bad faith and for the purpose of harassment.

SEVENTH AFFIRMATIVE DEFENSE

Neither Defendant SMA nor its servants or agents caused Plaintiff to suffer any emotional distress, indignity, embarrassment, humiliation, annoyance, inconvenience, or caused any harm, loss or damages whatsoever to Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

Defendant SMA did not engage in any behavior the natural consequence of which was to harass, oppress or abuse the Plaintiff.

NINTH AFFIRMATIVE DEFENSE

Defendant SMA did not engage in any false, deceptive or misleading behavior.

TENTH AFFIRMATIVE DEFENSE

Defendant SMA did not employ false representations and deceptive means.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant SMA did not use unfair and unconscionable means.

TWELTH AFFIRMATIVE DEFENSE

Pursuant to F.R.C.P 11, as amended, all possible affirmative defenses may not have been alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Defendant's Answer; therefore, Defendant reserves the right to amend his Answer to allege additional affirmative defenses if subsequent investigation warrants.

Dated: November 13, 2014

DUBOWSKY LAW OFFICE, CHTD.

By: /s/Peter Dubowsky

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DUBOWSKY LAW OFFICE, CHTD.

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2014 the DEFENDANT SMA'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT was deposited in a sealed envelope, postage pre-paid, in the United States Mail, addressed as follows:

David Krieger, Esq.
HAINES & KRIEGER, LLC
8985 South Eastern Avenue, Suite 130
Las Vegas, NV 89123
Attorney for Plaintiff

/s/William Thompson
An employee of Dubowsky Law Office, Chtd.

DUBOWSKY LAW OFFICE, CHTD.